

ORIGINAL

FILED

2008 MAY 19 PM 2:21

CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Wly DEPUTY

1 JOHN M. McCOY III, Cal. Bar No. 166244
Regional Trial Counsel
2 Email: mccoyj@sec.gov
KAREN MATTESON, Cal. Bar No. 102103
3 Email: mattesonk@sec.gov
LORRAINE B. ECHAVARRIA, Cal. Bar No. 191860
4 E-mail: echavarria@sec.gov
KAROL POLLOCK, Cal. Bar No. 77009
5 Email: pollockk@sec.gov

6 Attorneys for Plaintiff
Securities and Exchange Commission
7 Rosalind R. Tyson, Acting Regional Director
Michele Wein Layne, Associate Regional Director
8 5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
9 Telephone: (323) 965-3998
Facsimile: (323) 965-3908

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

FILED

13 SECURITIES AND EXCHANGE
14 COMMISSION,

Case No. '08 CV 0888 H POR

15 Plaintiff,

COMPLAINT

16 vs.

17 GORDON C. BIGLER,

18 Defendant.

19 Plaintiff Securities and Exchange Commission ("Commission") alleges as
20 follows:

21 JURISDICTION AND VENUE

22 1. This Court has jurisdiction over this action pursuant to Sections
23 21(d)(1), 21(e), 21A(a)(1), and 27 of the Securities Exchange Act of 1934
24 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1(a)(1), & 78aa.
25 Defendant has, directly or indirectly, made use of the means or instrumentalities of
26 interstate commerce, of the mails, or of the facilities of a national securities
27 exchange in connection with the transactions, acts, practices, and courses of
28 business alleged in this Complaint.

3. This matter involves unlawful insider trading in the securities of Provide Commerce, Inc. ("Provide") by defendant Gordon C. Bigler ("Bigler"), who at the time was Provide's director of corporate finance and investor relations. Bigler purchased shares of Provide stock on November 15, 2005, immediately after he learned material, nonpublic information concerning a proposed acquisition of Provide by Liberty Media Corporation ("Liberty"). After the intended acquisition was publicly announced by Provide on December 5, 2005, Bigler sold all of the Provide shares he had purchased on November 15, realizing a profit of \$41,622.78.

4. By engaging in the conduct described in this Complaint, Bigler violated the antifraud provisions of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5. The Commission seeks a judgment permanently enjoining Bigler against future violations of these provisions, ordering disgorgement of ill-gotten gains and prejudgment interest thereon, and imposing a civil penalty.

5. Gordon C. Bigler is a resident of San Diego, California. From September 2005 through March 2006, Bigler was employed by Provide as its director of corporate finance and investor relations.

6. Provide, a Delaware corporation headquartered in San Diego, California, is an e-commerce company that sells fresh flowers and fruit. Until its acquisition by Liberty on February 10, 2006, Provide's securities traded on the Nasdaq National Market under the symbol "PRVD."

1 7. Liberty is a Delaware corporation headquartered in Englewood,
2 Colorado. Liberty, through its subsidiaries, is in the media, communications, and
3 entertainment businesses. Liberty's common stock is registered with the
4 Commission and is traded on the NASDAQ Global Select Market under the
5 symbol "LCAPA."

6 **THE DEFENDANT'S FRAUDULENT CONDUCT**

7 8. Bigler joined Provide on September 23, 2005 as director of corporate
8 finance and investor relations.

9 9. During the week of October 3, 2005, a Liberty senior vice president
10 contacted Provide's chief executive officer regarding Liberty's interest in acquiring
11 Provide.

12 10. On or prior to the morning of November 15, 2005, Provide's chief
13 financial officer notified Bigler of material, nonpublic information concerning the
14 pending merger between Liberty and Provide. Subsequently, Provide's chief
15 financial officer sent Bigler an email on November 15, 2005 at 11:11 a.m.
16 containing additional material, nonpublic information, including an attachment
17 setting forth Provide's five year financial forecast and Liberty's proposed
18 acquisition price of \$33 per Provide share for the pending merger.

19 11. On November 15, 2005, shortly after this email was sent to Bigler,
20 Bigler purchased 4,500 shares of Provide stock at a price of \$24.28 per share, for a
21 total purchase price of \$109,325.45.

22 12. On December 5, 2005, Provide and Liberty announced their pending
23 merger. Provide's stock price rose from a closing price of \$30.23 on the last
24 trading day before the merger announcement to a closing price of \$33.76 per share
25 on the day of the merger announcement. The trading volume rose from an average
26 of 174,096 shares traded per day to 1,993,631 shares traded on the day of the
27 merger announcement, a 1,045% increase from the average daily trading volume.

28 13. On December 5, 2005, Bigler sold all 4,500 of his Provide shares for

1 \$33.56 per share, thus obtaining a total sales price of \$150,948.23. Bigler realized
2 a profit of \$41,622.78 from this sale.

3 14. During the relevant period, Bigler was a corporate insider of Provide.
4 Bigler made his trades in Provide stock on the basis of material, non-public
5 information in breach of his duty of trust and confidence to Provide and its
6 shareholders.

7 15. Bigler acted with scienter. Bigler knew, or was reckless in not
8 knowing, that the information he learned in the November 15, 2005 email about
9 Liberty's proposed acquisition of Provide and the price Liberty proposed to pay for
10 Provide shares was material, non-public information. Bigler knew he owed a duty
11 of trust and confidence to Provide and its shareholders. Despite this knowledge,
12 Bigler purchased 4,500 shares of Provide stock on November 15, 2005 on the basis
13 of this material, non-public information.

14
15 **CLAIM FOR RELIEF**
16 **FRAUD IN CONNECTION WITH THE**
17 **PURCHASE OR SALE OF SECURITIES**
18 **Violations of Section 10(b) of the Exchange Act**
19 **and Rule 10b-5 Thereunder**

20 16. The Commission realleges and incorporates by reference paragraphs 1
21 through 15 above.

22 17. Defendant Bigler, by engaging in the conduct described above,
23 directly or indirectly, in connection with the purchase or sale of a security, by the
24 use of means or instrumentalities of interstate commerce, of the mails, or of the
25 facilities of a national securities exchange, with scienter:

- 26 a. employed devices, schemes, or artifices to defraud;
- 27 b. made untrue statements of a material fact or omitted to state a
28 material fact necessary in order to make the statements made,
in the light of the circumstances under which they were made,
not misleading; or

1 c. engaged in acts, practices or courses of business which operated
2 or would operate as a fraud or deceit upon other persons.

3 18. By engaging in the conduct described above, defendant Bigler
4 violated, and unless restrained and enjoined will continue to violate, Section 10(b)
5 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
6 240.10b-5.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Commission respectfully requests that the Court:

9 **I.**

10 Issue a final judgment, in a form consistent with Fed. R. Civ. P. 65(d),
11 permanently enjoining defendant Bigler and his agents, servants, employees, and
12 attorneys, and those persons in active concert or participation with any of them,
13 who receive actual notice of the final judgment by personal service or otherwise,
14 and each of them, from violating Section 10(b) of the Exchange Act, 15 U.S.C.
15 § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

16 **II.**

17 Order defendant Bigler to disgorge all ill-gotten gains from his illegal
18 conduct, together with prejudgment interest thereon.

19 **III.**

20 Order defendant Bigler to pay a civil penalty under Section 21A(a) of the
21 Exchange Act, 15 U.S.C. § 78u-1(a).

22 **IV.**

23 Retain jurisdiction of this action in accordance with the principles of equity
24 and the Federal Rules of Civil Procedure in order to implement and carry out the
25 terms of all orders and decrees that may be entered, or to entertain any suitable
26 application or motion for additional relief within the jurisdiction of this Court.

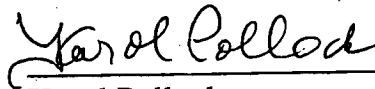
27 *

28 *

V.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: May 19, 2008



Karol Pollock
Attorney for Plaintiff
Securities and Exchange Commission

FILED

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

2008 MAY 19 PM 2:26

I. (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Karol Pollock, Esq., Securities and Exchange Commission, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036

DEFENDANTS

GORDON C. BIGLER

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. DEPUTY

Attorneys (If Known)

'08 CV 0888 H POR
Edward Gelfand, Gartenberg Gelfand Wasson & Selden, LLP,
11755 Wilshire Blvd., Suite 1230, Los Angeles, CA 90025

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
--	--	--	--	--	--

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 thereunder.

Brief description of cause:

The Complaint alleges violations of the federal securities laws.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/19/2008

SIGNATURE OF ATTORNEY OF RECORD

Karol Pollock

Karol Pollock

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ORIGINAL

6